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Security Council
Fifty-first Year

Provisional

3683rd Meeting
Friday, 26 July 1996, 3 p.m.
New York

President	Mr. Dejammet	(France)
Members:	Botswana	Mr. Legwaila
	Chile	Mr. Somavía
	China	Mr. Qin Huasun
	Egypt	Mr. Elaraby
	Germany	Mr. Eitel
	Guinea-Bissau	Mr. Queta
	Honduras	Mr. Martínez Blanco
	Indonesia	Mr. Wibisono
	Italy	Mr. Ferrarin
	Poland	Mr. Włosowicz
	Republic of Korea	Mr. Choi
	Russian Federation	Mr. Gorelik
	United Kingdom of Great Britain and Northern Ireland	Sir John Weston
	United States of America	Mrs. Albright

Agenda

Shooting down of two civil aircraft on 24 February 1996

Note by the Secretary-General (S/1996/509)

96-86052 (E)

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The meeting was called to order at 3.25 p.m.

Adoption of the agenda

The agenda was adopted.

Shooting down of two civil aircraft on 24 February 1996

Note by the Secretary-General (S/1996/509)

The President (*interpretation from French*): I should like to inform the Council that I have received letters from the representatives of Colombia, Cuba, the Lao People's Democratic Republic and Viet Nam, in which they request to be invited to participate in the discussion of the item on the Council's agenda. In conformity with the usual practice, I propose, with the consent of the Council, to invite those representatives to participate in the discussion, without the right to vote, in accordance with the relevant provisions of the Charter and rule 37 of the Council's provisional rules of procedure.

There being no objection, it is so decided.

At the invitation of the President, Mr. Alarcón de Quesada (Cuba) took a seat at the Council table; Mr. García (Colombia), Mr. Kittikhoun (Lao People's Democratic Republic) and Mr. Ngo Quang Xuan (Viet Nam) took the seats reserved for them at the side of the Council Chamber.

The President (*interpretation from French*): The Security Council will now begin its consideration of the item on the agenda. The Security Council is meeting in accordance with the understanding reached in its prior consultations.

Members of the Council have before them the note by the Secretary-General dated 1 July 1996 (S/1996/509), transmitting the letter dated 28 June 1996 from the President of the Council of the International Civil Aviation Organization addressed to the Secretary-General.

Members of the Council also have before them document S/1996/596, which contains the text of a draft resolution submitted by the United States of America.

I should like to draw the attention of the members of the Council to the following other documents: S/1996/152, letter dated 1 March 1996 from the Permanent Representative of Cuba to the United Nations addressed to the President of the Security Council; and S/1996/154, 370, 448, 449, 458, 470, 498, 499, 520, 525, 532, 570 and 577, which contain letters dated 1 March, 22 May, 18, 18, 21, 25, 28 and 28 June, 2, 3, 4, 16 and 17 July 1996, respectively, from the Permanent Representative of Cuba to the United Nations addressed to the Secretary-General.

Mrs. Albright (United States of America): We meet today to consider a matter of grave concern to my country, to members of this Council and to all who care about the safety of those engaged in civil aviation around the world.

The issue before us is not the United States versus Cuba. It does not require that Council members make a judgement about the repressive nature of Cuba's Government or about the rights and wrongs of the past 35 years of United States-Cuban relations. The draft resolution deals, instead, with a fundamental question of international law and with the observance or non-observance of international standards.

It is for this reason that the draft resolution condemns the cowardly and cold-blooded shootdown by Cuba on 24 February of two unarmed civilian aircraft operated by Brothers to the Rescue and declares that shootdown to be a violation of international law. The draft resolution also extends to the families of those who were killed the Council's deepest sympathy and condolences. I thank those of my colleagues who met with the family members of those killed on 24 February and who can better appreciate the human dimension of this tragedy. The draft resolution also demands that all nations, specifically including Cuba, abide in the future by international legal standards governing civil aviation.

Months ago, in the aftermath of the shootdowns, representatives of the United States and Cuba each set out a version of the events that took place on 24 February. In key respects, those accounts differed. To resolve the differences, each Government pledged to cooperate fully with an investigation to be conducted by the International Civil Aviation Organization (ICAO). Inherent in the pledge of each was an obligation to accept the outcome of that investigation. The United States does accept the outcome of that investigation. Indeed, we believe that it provides an accurate account of the facts.

Those facts are clear. The Cuban military first identified these two unarmed Cessna planes as civil aircraft and then knowingly and intentionally destroyed them with air-to-air missiles. The Cubans did not follow

ICAO standards or their own published procedures for intercepting aircraft. The Cubans did not attempt to make radio contact with either plane, nor did they instruct the planes to land at a designated location. Finally, according to the most reliable position estimates, the aircraft were destroyed approximately 9 to 10 miles outside Cuban airspace.

By its actions, Cuba violated the principle of customary international law that States must refrain from resorting to the use of weapons against civil aircraft in flight — a principle that applies whether the aircraft are in national or international airspace. Cuba violated the ICAO principle that interception of civil aircraft should be undertaken only as a last resort. Cuba failed to follow proper warning procedures. And, as the ICAO noted in its own resolution on 27 June, by taking the lives of four of my countrymen — Pablo Morales, Carlos Costa, Mario de la Peña and Armando Alejandre — Cuba violated elementary considerations of humanity.

Although the draft resolution before us today is prompted by a tragedy that occurred five months ago, its greatest value relates to the future. This Council's primary mission is to maintain international peace and security. The draft resolution serves that goal by calling upon all nations to refrain from shooting down civil aircraft in violation of international legal standards.

But the Government of Cuba still refuses to acknowledge the unlawful nature of its actions on 24 February. It has not expressed regret at the death of the four men who were killed, or evidenced sympathy for the irreplaceable loss felt by their families. And it continues to threaten that it may shoot down civil aircraft again.

Quite frankly, Cuba's position has been callous and contemptible. They shoot down civil aircraft and then blame the victims. They call for an investigation and then blame the investigators. They are the aggressors in this case and yet claim they are being persecuted. They are consistent only in their refusal to admit the truth and their determination to lie to the world over and over again.

Clearly, the Government of Cuba has not met or accepted its responsibility to comply with the Chicago Convention and customary international law, which set out the standards of international behaviour with respect to civil aviation. In contrast, my Government does accept its responsibilities, both generally and with respect to the control of United States aircraft.

Well prior to 24 February, we issued warnings and notices urging United States airmen not to enter Cuban airspace without authorization. When the pilot of a United States-registered civil aircraft overflew Havana last July, we moved to suspend his license to fly.

All along, we have asked the Cuban Government for information concerning alleged intrusions into its airspace, and we have kept Cuba apprised of our actions. And Cuba has previously acknowledged our efforts and cooperation in this regard.

As I said at the beginning of my remarks, this is not an issue of the United States versus Cuba. The people of every nation are vulnerable to lawless acts, be they acts of terrorism or acts committed intentionally by Governments in violation of international law. The very purpose of the Security Council is to help protect the people of all nations against such acts. We are here to protect international security and peace.

As far as I am concerned, what the Cuban military did on 24 February was a crime and no excuse, no rationalization and no finger-pointing by the Cuban Government can change that judgement. If we were to allow such acts to occur without expressing our condemnation, we would not be meeting our responsibility to the international community. If we were to remain silent in the face of Cuba's continued threat to shoot down civil aircraft in flight, we would invite a repetition of this tragedy. If we were not to insist that all countries meet their obligations concerning civil aviation, we would put at risk the lives of all people who travel by air.

In recent weeks, we have seen and heard a great deal about the anguish that the loss of a loved one in an aeroplane crash can cause. In some cases, we know that the tragedy is caused by mechanical shortcomings which we can address. In other cases, we do not know the cause and there is little we can do. In this case, we know the cause and we know that the remedy is to accept and adhere to the rule of law.

That is all that we demand of Cuba. And that is the standard we must always demand of each other and of ourselves.

The President (*interpretation from French*): The next speaker is the President of the National Assembly of People's Power of the Republic of Cuba, His Excellency

Mr. Ricardo Alarcón de Quesada, whom I welcome and on whom I now call

Mr. Alarcón de Quesada (Cuba) (*interpretation from Spanish*): At the outset, allow me to express my satisfaction at seeing you, Sir, presiding over the Council's work this month. I wish to thank you for your words of welcome and for the courtesy you have extended me during the time in which we have been in contact as we prepared for this meeting of the Security Council.

I also wish to express my thanks and appreciation to your predecessor, Ambassador Elaraby, to whom I owe a debt of gratitude for his cooperation last month.

It was also on a July afternoon — according to the story, on a day warmer than today — when little Alice heard a clear-cut, inexplicable warning from the Queen:

(spoke in English)

"'No, no!' said the Queen. 'Sentence first — verdict afterwards'". *(Carroll, Alice in Wonderland, chap. XII)*

(spoke in Spanish)

That message has dominated attempts made by the United States of America since February to manipulate information and falsify data to make it practically impossible, or at least as difficult as it could be, to analyse the 24 February incident and the circumstances and conditions that produced it. That effort has been accompanied by an intense publicity campaign seeking to pass sentence in advance, just as everything possible was done to prevent the truth from becoming clear.

Out of respect for the members of this body and for all of the representatives to this Organization who are not members of the Council, but to whom the Council must answer, I would like to clarify several issues. In the spirit of issuing the sentence "sentence first, verdict afterwards", this Council was convened hastily in February. A presidential statement was adopted in which the International Civil Aviation Organization (ICAO) was asked to examine this incident and to present its conclusions to the Council, with the Council's promise that it would consider them without delay.

The Council of the International Civil Aviation Organization (ICAO) met in Montreal on 6 March and adopted a resolution asking its Secretary General to conduct an investigation and submit the results 60 days thereafter. On 6 May 1996 — 60 days later — the Council of the ICAO met to examine this document, the provisional report on the progress of the investigation regarding the shooting-down, and so forth. This report shows that on 19 March — 13 days after the Council of the ICAO adopted its resolution regarding the investigation — the same communication was sent to the Government of the United States of America and to the Government of the Republic of Cuba. It was accompanied by a list of requests for information from the relevant authorities, and of requests for action to be taken, in the United States or in Cuba, with a view to the preparation of a report. In that same communication, a request was made for the relevant authorization to visit the two countries to allow the work to proceed.

The Republic of Cuba responded immediately to this communication by inviting the ICAO investigation team to visit Cuba whenever they wished. The team arrived in Havana on 24 March 1996, five days after that communication was sent.

The provisional report says that on 30 March 1996 the Cuban authorities had completely responded to all the requests made by the team. This is followed by an account of all the requests made, with which Cuba had complied by 30 March 1996. The preliminary report also states that the ICAO investigation team visited Washington between 2 and 4 April. It returned to Montreal, and then went back to the United States — to Miami, Florida, where the team remained from 14 to 19 April. The investigators do not say anywhere in the report — and they would not be able to do so — that the United States was in full compliance with their requests, as Cuba had been.

Paragraph 3.2.4, page 4, of the 6 May provisional report of the ICAO also states that further contacts and talks were being held with regard to the submission, *inter alia*, of information that it proceeds to list. I shall not read this out, as it is almost a full page long. I shall merely highlight the issues to which, by 19 April the United States had not responded: transcriptions of communications from land control — this refers to the interceptor planes. On 6 May the ICAO said that it was still awaiting submission by the United States of the transcription of communications between land control and the interceptor planes. For anyone who wishes to see them, our delegation has copies of these transmissions, which the Permanent Mission of the United States of America to the United Nations distributed in New York, in this very building, to the press of this country on 27

February. None the less, on 6 May that information had not been submitted to the ICAO investigators. We will subsequently be able to consider why that was so.

The list of information to be provided by the Government of the United States continues: radar data from the customs coordinations centre of the United States; radar data from the incident registered by the Caribbean regional centre in southern Florida; radar data from the Miami ARTCC and air force installations in Florida; radar data recorded by United States navy air traffic control in Key West; radar trace of a plane that was north of the 24th parallel on that date; and information on the degree of observance of measures adopted regarding prior incursions into Cuban airspace.

As members can see, ICAO had set a certain date for receipt and consideration of the investigation report, but when that date passed, it had to indicate that it had not yet received from the United States of America the transcriptions of radio communications, or any radar data, or any information on measures adopted regarding earlier violations of Cuban airspace, in spite of the fact that it had been said, and has been repeated, that measures in fact had been taken before 24 February.

As a result of that situation, on 6 May, the Council of ICAO had to agree to extend the investigation deadline by an additional month, and it asked its team to continue to work. In other words, they had to continue to wait for the United States to provide this basic data, which one presumes should have existed since February, and the ICAO Council had to delay its meeting until 6 June. On 6 June, the only thing the ICAO Council could do was to defer once again its consideration of the report, which had not yet been completed because they had not yet received all the information which they were awaiting from the United States side. The Council therefore had to delay this until the very last week of its session. The session even had to be extended one more week to accommodate the situation, to see whether it would be possible at last to obtain United States cooperation. On the very eve of the closing of the most recent session of the ICAO Council, that body was finally able to fulfil the Security Council's request to examine and report on this incident.

Something strange happened. If the ICAO Council met on 26 June, many members of the Security Council were probably able to read in the United States media as early as 20 June what the United States had already determined was going to be the conclusion of the Council's consideration of the report, which in fact it did not yet possess. And on 20 June, no less than the Under-Secretary of State of the United States, speaking from nowhere less than the White House, distributed to anyone who might be interested a text of what it was assumed would be the investigation team's final report — which no one in Montreal had yet received — and indicated to the media in advance what, in his view, was going to be the decision of the United Nations:

(spoke in English)

"Sentence first — verdict afterwards".

(spoke in Spanish)

That weekend the members of the ICAO Council finally received the investigation team's report, and were able to discuss it on 26 and 27 June. As a result, it was agreed to send the resolution before the Council, which was the result of discussion among the members of that specialized agency of the United Nations. The ICAO Council declined, and not on a whim, to endorse the investigation team's report; it was no coincidence that it refused to endorse it, but simply transmitted it to this principal organ of the United Nations, as what the President of the Council of ICAO defined the collective ruling, the collective view of the States members of the Council of the International Civil Aviation Organization, as reflected in the resolution the Security Council has received, and not in any other document.

However, as many Members of the United Nations, albeit not Security Council members or members of the ICAO Council, may be interested in knowing something about the reasons why the investigation developed in this way, why the report to the Council of ICAO was made in the way that it was, and why that Council reached the decision to which I have already referred, I would like to comment on at least a few of the central points relating to the allegedly proven data which I referred to at the beginning of this statement.

I would invite Security Council members to look at page 77 of the investigation team's report. They will see there how the members of the team explain how they analysed the question of the place where the incidence occurred and the elements they used to calculate or estimate that location. In paragraph 2.3.7.3, they explain they arrive at it by means of a combination of:

> "the communications recording provided by the United States", *(S/1996/509, annex, appendix B)*

which was disclosed here in February but which there was concealed until May,

> "in particular the reference to a large passenger ship and a fishing boat". *(Ibid.)*

The investigators add that those three elements

> "supported the view that the shoot-downs occurred near those vessels". *(Ibid.)*

The following paragraph states that

> "Eyewitness accounts obtained from the *Majesty of the Seas* and the *Tri-Liner* were mutually supportive" and that "the position of the *Tri-Liner* relative to the *Majesty of the Seas*, and the resulting estimated locations of the shoot-downs could therefore be considered to be the most reliable position estimates." *(para. 2.3.7.4)*

Three basic elements — radio communications; eyewitnesses from vessels, or, to be more specific, one vessel, *Majesty of the Seas*, and an alleged fishing boat which allegedly would have been in the area; and the combination, the mutual relationship between the location of those two vessels — together with the radio communication would allow for the most reliable estimate. Allow me to indicate some important issues relating to those three elements. As I said, we shall be distributing a document, distributed by the Permanent Mission of the United States of America on 27 February, distributed here in this City of New York, here in this United Nations building, with this peculiar warning on each page of the document:

(spoke in English)

> "This is the authoritative version of these transcripts as of 12.00, 27 February 1996. Destroy all others."

(spoke in Spanish)

Perhaps that version too was destroyed, because one need only look at the ICAO report to see that what was submitted to ICAO was a transcript, supposedly as official as this earlier one provided by the United States, but with six minutes missing. The first six minutes of the radio communication, which are present in the February document, have disappeared in May when at last the information is generously handed over to the investigation team. And it happens that those six minutes relate specifically to the location of the aircraft that penetrated Cuban airspace and to the location of the vessel *Majesty of the Seas*.

There is mention of eye-witnesses from the *Majesty of the Seas* and the *Tri-Liner*. I invite members of the Council to consider the text of the report carefully. Indeed, it would be extremely useful to examine the verbatim record of the meeting of the Council of ICAO at which the information I am speaking of was discussed at considerable length. Nowhere, either in the preliminary report of May or the final report of June, is there any reference to the investigation team having directly, personally interviewed any witness from either vessel, the *Majesty of the Seas* or the alleged United States fishing boat, supposedly named *Tri-Liner*. The investigators say that when they went to Miami in April, they spoke with individuals from an aircraft involved in the incident. At the ICAO Council meeting, Mr. Frostell, the head of the investigation team appointed by the ICAO secretariat, indicated that they had not spoken with any member of the *Tri-Liner* crew and that they had not visited that vessel.

Hence, there has not even been any proof of the very existence of the alleged fishing boat supposedly known as the *Tri-Liner*. Yet in the portions to which I have referred, the report makes use of the versions provided by so-called eye-witnesses from that fishing boat to establish its position in relation to the *Majesty of the Seas* — whose existence no one denies — to attempt to estimate the possible location of the downing.

To make matters even more obvious — since the questionable situation faced by the team is so clear from this portion of the report and from its conclusions — they state that they were unable to provide independent proof of the location of the *Majesty of the Seas*.

With regard to the communications recording, I wish to point out something which is contained in the report and which was the subject of considerable discussion at the ICAO Council meeting: the mystery of this document — far from being made clear through the efforts of the investigation team — became increasingly complicated in the course of the investigation. I refer here to the February version; the May version of the recording was not actually submitted by the United States to the ICAO secretariat. They state clearly that in May they had the opportunity to listen to what the United States said was a recording of these radio communications, which were subsequently transcribed

The transcription clearly demonstrates the difference from what had earlier been transcribed and distributed in February: six minutes had been eliminated, plus other, less important, differences between the two United States versions.

As to Cuba, the report states that by 30 March Cuba had submitted not only its radar data but also its radio communications. It had also made it possible for the team to interview any witnesses it wanted. We also submitted to them the original tape on which the Cuban side had recorded these radio communications. In addition, we submitted the equipment that had been used to make those tape recordings.

It is now July. The ICAO investigation is over; the discussions in Montreal are over; the Security Council is about to conclude its work; and the ICAO investigation team is not able to change what it said in Montreal and what is stated in the report: that, from the United States side, they listened to — merely listened to — a cassette, inserted into a tape player in the presence of representatives of the Government of the United States, who were, as the report tells us, the custodians of that cassette. Given that, as even the United States indicates, what they were permitted to hear in May was clearly different from what existed in February — that the transcription was lacking six minutes — I do not see why we should have any greater confidence in other parts of the version which the investigators were only permitted to hear, the original tape of which was never submitted by the United States Government.

Those are the ins and outs of the radio communications. As to eye-witnesses, I have already indicated what the report itself says. The radar situation is no less interesting: two months after an incident occurred, the United States authorities were not yet in a position to provide any data from any of their radars, despite the fact that, as the report itself indicates, the United States authorities had been warned a day in advance, on 23 February, that on 24 February there would be a flight or flights that should be properly tracked and logged by all radar installations.

Paragraph 2.2.2 of the report says that in the early afternoon of 13 February — 13 February, 11 days earlier — the Department of State's Office of Cuban Affairs contacted the FAA's Office of International Aviation Office, informing it that something might occur in connection with these flights and that they should be alerted. The following paragraph says that on 23 February, the various United States communications control centres received instructions — warnings — from the authorities to the effect that certain flights that were to take place the next day should be appropriately documented.

In spite of this, not a single one of these installations was in a position to provide any data whatsoever by 19 April, when the investigation team went to the United States. According to the report, on 21 May meetings were held anyway in Montreal between representatives of the Government of the United States and the investigation team to see if the team might at last be able to obtain the remaining data. Council members can look in the introduction to the report and see — and I will read the paragraph word for word — that it says:

> "Additional information was requested, and was provided on 21 May 1996 by the authorities in the United States regarding the mission of the P-3 Orion aircraft, and radar data from Naval Air Station at Key West, CARIBROC and NORAD's SEAD sector". (*S/1996/509, annex, appendix B, para. 12*)

The report goes on to explain exactly what was submitted as regards the radar data of the Key West Naval Air Station. What was submitted was the 21 May news that the Key West installation had erased its radar data, had eliminated it, and that it had done so within 15 days of the incident, around 6 March — almost immediately after the staff of that installation was advised that an investigation was being conducted and that someone would be coming to ask for that specific data. I do understand why even information as categorical as the elimination of data was not made known to the investigation team until 21 May.

The United States should explain the level of care and seriousness used in the work of their federal agencies, since despite being warned by Washington that a flight should be recorded because there might be an incident on it, and then, once the incident had taken place at exactly the installation closest to where the events occurred, the one that was involved in the incident — because one can see in the report that planes have to fly over Key West and could possibly land there at any given time — simply erased its data. Furthermore, as the report states, no United States radar data proved useful in describing the final minutes of that flight, that is to say, the final minutes of the incident.

It does not seem to me difficult to understand the way in which the United States handled the data and the information that it was obliged to provide, the way in which it manipulated or concealed the information, the way in which it adulterated the radio communications, the way in which it did not facilitate contact by the investigators with the supposed witnesses of the supposed fishing boat that supposedly was in the area, but that no one saw and with whose crew members no one spoke — all this in order to be able to claim that the incident took place somewhere other than where it actually did — in other words, to present the case as if it were a question of destruction over international waters and not, as was the case, well within the territory of the Republic of Cuba.

Furthermore, the United States delegation is trying to persist in that same effort at manipulation and confusion as regards the supposedly civilian nature of the aircraft involved. I must make a few clarifications in this respect. I do not believe I can improve upon what ICAO itself believes should be the criteria for deciding if an aircraft has civil status or not. As is stated in an ICAO secretariat document, prepared at the request of its Council precisely to help make this fundamental issue as clear as possible:

> "The use of the aircraft in question is the determining factor" — I repeat: the use of the aircraft in question is the determining criterion — "and not other factors such as the registration and the markings on the aircraft ..."

In other words, the first question would have to be, what was the use of the aircraft involved in the incident of 24 February? That needs to be defined before trying to apply to them the legitimate concern for the protection and development of international civil aviation, as the United States side arbitrarily insists on doing. Neither their use nor their mission related to the transport of passengers, mail or cargo; they had nothing to do with international civil aviation and a great deal to do with its abuse, a great deal to do with putting at risk the thousands of aircraft that truly are of a civil nature — most of them United States aircraft — that have the right to navigate that airspace, that have full cooperation from Cuba for that purpose, and that should have the due attention of the United States authorities.

These authorities should be concerned with true civil aviation and with seeing that there is no abuse in that area, because their own aircraft are the ones that use the airspace the most and their nationals are the ones who fly through there — hundreds of thousands of passengers a year, all enjoying the technical aid and cooperation of Cuban authorities. There has never, ever been a single incident involving a United States civil aircraft, out of the hundreds that pass each day through these corridors linking Cuba with the United States.

It should be the principal concern of the United States Government - especially now, but at all times as well - to see to it that nothing violates, endangers or distorts genuinely civilian international communications in this zone, so near to its territory.

I have spoken of the aircrafts' mission, but more than this is at issue. All the aeroplanes used by the group responsible for the 24 February flights are of a single model, the Cessna 337. But, as anyone who is at all familiar with the subject of aviation knows, this Cessna model, and no other, happens to have a dual-purpose design: civil and military. If anyone interested in aviation should look through *Jane's All The World's Aircraft*, a fairly widespread publication, they will find in any of its editions a description of the Cessna 337 — or, according to its United States Air Force designation, the O2. It is known as the 337 when it is used to carry passengers, cargo or mail, and as the O2 when used by the United States military in Viet Nam and Central America. In other words, it is a plane designed and developed equally for tasks or missions of a military nature. You can find a similar description in any United States military aviation handbook, in which the O2 is nowhere referred to as a civilian aircraft but only as one of the models that is used for certain military tasks, as it has been by the United States Government. The mission that was being carried out had nothing to do with international civil aviation; the equipment used can also have military purposes according to the United States' own handbooks.

But there is more. Three years ago and earlier, in 1992 and 1993, in Miami, a United States Congresswoman from Florida organized a major campaign to petition the Pentagon to provide several Cessna 337s or O2s to the group that participated in the incident of 24 February. She was very explicit and active, making many statements and taking a number of initiatives. It would seem that she was successful, because on 19 July of that year the *Miami Herald* published a report on its editorial page, written not by just any journalist but by Mr. David Lawrence, the editor of the *Herald*.

In this account, Mr. Lawrence tells us of a trip he took with the group known as Brothers to the Rescue, the

group in question. Like any good journalist, he accompanies his account with photographs, including some of the plane that was used. In one, the marking "N2432S" is quite sharp; in another, four letters are clearly visible on its wing: "USAF". In other words, this is not merely a type of plane that is used by the military; it is not, as the Congresswoman claimed, just that similar aircraft were to be found in airports in Florida ever since the end of the conflict in Central America: Mr. David Lawrence Jr. actually flew in the one bearing the marking N2432S, from which the United States Air Force marking had not even been erased.

That is one thing. Another is that, today, 26 July, at 4.25 p.m., this aircraft is at the Opa Locka airport in Miami. It still bears the markings of the United States Air Force; it still belongs to Brothers to the Rescue and may be involved tomorrow, the day after, or at some point in the future in one of that group's operations.

On 26 June 1996, at the meeting of the ICAO Council, what I have said here was acknowledged by Mr. Frostell, who said that, indeed, this plane was still at Opa Locka and that it still bore United States military insignia. It is true that the "F" is a bit faded; it would seem that it is beginning to wear out, but you can still see it. It still belongs to Brothers to the Rescue and at any time could be used for acts of provocation against Cuba.

I do not know if members can recall earlier situations in which this Council or any other international body has considered any incidents related to international civil aviation. But I can say that there has been no other case before the international community of premeditated activities undertaken by an organization that is involved not in civil aviation but in illegitimate activities that not only violate international law, United States regulations and Cuban sovereignty, but are also related to very serious crimes against the Cuban people.

Cuba has had long experience in opposing actions taken against it and its people by small aircraft operating from United States territory. Cuban sugar fields have been burned by small aircraft. Cuban cities have been attacked from small aircraft. Explosives have been hurled from small aircraft. Sabotage has been carried out from small aircraft. Biological substances have been introduced into our country from small aircraft. From aircraft such as those of this group, actions of sabotage have been and are being planned against installations of the Republic of Cuba.

In this connection, let us consider page 83 of the report, which describes contacts between the United States authorities and Mr. Juan Pablo Roque, who had connections to the Federal Bureau of Investigation (FBI) and who worked with it, providing information beginning in the summer of 1993 and ending in November 1995. It is logical that the FBI should have informers in various places, including among that group; I would imagine that there are many of them even now. The FBI must be awash in information. This person provided the Bureau with information on the group to which he belonged. I shall read from the report of the group of investigators, which, since it is within quotation marks, I must suppose to be information provided by the FBI to the investigation team.

It reads as follows:

> "'Twelve of the contacts were related to the Brothers to the Rescue. These reports include discussions of possible plans to smuggle or airdrop weapons into Cuba, and other plans to violate Cuban airspace'." *(S/1996/509, annex, appendix B, para. 2.6.9)*

The explanation that the Council has just heard tries to suggest to listeners that the situation was accidental, surprising and unprecedented, a situation in respect of which the Government of the United States had been taking measures prior to 24 February, as it had some information about possible violations.

The report of the investigation team says something to this effect. But there is much more, and an attempt is being made to keep it carefully concealed. I have another United States document, dated 5 July 1996. I do not have all of it, as it is very long and has thousands of pages. It is a document of the National Transportation Safety Board (NTSB), an entity which is often referred to in the press. On 5 July it examined the matter to which Ambassador Albright referred: the suspension of the licence of a pilot. It was originally suspended indefinitely, but the suspension has now been reduced to 150 days, which means that, if there is no change in the situation, that person will be able to fly again by October.

At 8.35 p.m. on Friday, 5 July, the NTSB held a meeting before an administrative judge of the Board, to consider the question of the suspension of Mr. Basulto's licence. Curiously, at that same meeting, Mr. Basulto seemed to be pre-empting the United States Ambassador

to the United Nations by making statements that seem to us to be very relevant. The United States presents its great, heroic, tough act of suspending a pilot's licence as an example of the vigorous application of its laws.

On page 1785 of that document Mr. Basulto himself pointed out the inconsistencies of the United States Administration. He indicated that his licence had been suspended for 82 days after 24 February, but that during that period he had flown his plane and absolutely nothing had been done about it. He also said that the United States Government, in the allegations it made when suspending the licence, referred to another incident — the only one that the United States Administration accepts. It was referred to in an earlier text of the draft resolution the Council is likely to adopt today, and concerns an aircraft that entered Cuban airspace on 13 July 1995. Everyone knows that this is a lie. Everyone knows that this is an unacceptable mockery of humanity. It even mocks the Security Council: the text refers to a plane in July 1995 for the simple reason that what happened that day was made public. It had been announced many months earlier, and had been covered by United States television. As he said, "I am being accused of that, but eight other aircraft were flying with me on that day." That is an interesting detail from the 5 July meeting. However, there are other points of interest which the Council should take into account. The report also refers to measures taken earlier by the United States.

The United States inspector, Mr. Charles Smith, supervisor of the office of the Miami district of the FAA, refers to meetings which he held in 1992, 1993, 1994 and, of course, in 1996, with people from this group, to try to convince them not to violate international law or United States regulations, and to warn them that they were committing offences which could be and should be punished.

Ambassador Albright said that steps had been taken before 24 February. Some inspectors or local authorities with a sense of responsibility, aware that those violations also put other United States travellers at risk, may have talked to those individuals. What does Mr. Smith say? He says that in July 1995, given that the violation was publicized and well-known, he received a very explicit response from the head of the group: he had to do what he had to do — and he did it. Mr. Smith interpreted this to mean that he was wittingly going to ignore rules and regulations and violate Cuban airspace. This was a man who was warned year after year by the authorities. But he had no reason to believe that any punishment would be meted out.

The testimony of Mr. William Schultz, a member of the Brothers to the Rescue group, appears on pages 1839 and 1840. Speaking before the administrative judge of the United States Transportation Safety Board, he says that he too had violated Cuban airspace. He flew over Havana on 13 July. He also says that he took with him a journalist from Channel 10, Miami, and a cameraman. He added that he was not charged by the FAA with any violation. He also explained that after arriving at Miami he saw on television that a number of planes, among them his own, were flying above Havana, obviously within the 12-mile zone, because they were physically over the capital of the Republic of Cuba. We have reached a total lack of respect for the truth. I do not see it in the text, which seems to be final; it has changed many times. But even yesterday, an earlier United States draft text stated that one plane had penetrated Cuban airspace on 13 July, even though the United States Government knows that there were at least eight planes, and even though the pilots of those planes themselves have said so. They refer to the injustice done to Mr. Basulto. Why take away someone's licence just so that you can refer to it in the Security Council? The policy is not to prevent these incidents, but to promote and encourage them.

I have already spoken of the trip taken by the editor of the *Miami Herald*. But what about the trip taken by Ambassador Dennis Hays? Who is Dennis Hays? I do not know if he is already an Ambassador or if he is still in the process of being confirmed by the United States Senate. And there, on 8 May 1996, before the United States Senate Foreign Relations Committee, where they were considering his possible confirmation as Ambassador to some Caribbean country, Senator Christopher Dodd, a well known person in North American politics, expressed alarm at information he had, that this was Mr. Dennis Hays, who until last summer was the Director of the State Department Office for Cuban Affairs. Senator Dodd, a cultured and informed political figure, had been told or had found out that the Miami press had said that Mr. Hays also flew with Brothers to the Rescue. He had also been a crew member of those airplanes when serving as Director of the Office for Cuban Affairs. Senator Dodd asked about this before the Senate, at a level which I imagine must be taken seriously in the United States.

Following a detailed explanation, Senator Dodd asked:

(spoke in English)

"Did you ever fly with Brothers to the Rescue?"

Mr. Hays responded:

"Yes, Sir. I believe it was in late '93 and '94. My predecessor had also flown with them".

(spoke in Spanish)

It is a tradition. Mr. Hays was appointed Director of the Office for Cuban Affairs and among his assignments was also to accompany the planes, which most likely bore North American insignia, which most likely were going to violate Cuban airspace, which most likely were going to commit sabotage. Does the United States really believe it can convince anyone that it has done anything at all to discourage or prevent these things? No, Cuba does not accuse the victims, it does not turn the victims into the guilty. The main culprit is the Government of the United States of America. The main responsible party is an Administration which has been unable, not just to comply with international law, an obligation it must feel it has, but even to ensure respect for its own aviation rules and regulations.

In this document, which sets out the discussion with the administrative judge of the National Transportation Safety Board, there is a very specific description which complements the investigation team's assertion that the United States expected an incident on 23 February. Not only is there the indication given on the thirteenth. Several United States civil aviation officials give testimony to this judge to the effect that there is background that dates back even earlier. One of these officials, Mr. Houlihan, on page 1796, says that one week before 24 February — in other words, on 17 February — he was called to a meeting in which he was warned that on 24 February, that is a week later, Mr. Basulto and other pilots of the organization called Brothers to the Rescue would fly towards Cuba with the purpose of creating a political incident: one week before, 17 February.

This is repeated to him on 23 February, and on 24 February, at 7.45 a.m., he is told that that flight with that purpose will take place. Are the United States authorities really so innocent? Do they really possess the moral authority to present themselves as zealous defenders of the law, as concerned for the lives of others, as the active promoters of security in international aviation, as having the authority to give advice to everyone on how to behave with regard to these possible incidences? Or are they the authority responsible for the occurrence of this incident? They knew about it beforehand. They informed Mr. Houlihan at least one week earlier. The information was repeated on the eve, and they knew what was happening throughout the incident.

I invite members to turn to page 5 of the ICAO report. It is a voluminous report and it is not easy to read completely. However, page 5 is at the very beginning. It is the first map which appears in this report. It is a map drawn from United States information. It simply shows the Florida peninsula, the Florida strait, the outline of the Republic of Cuba, and two lines. One is the planned route. The planes would have flown down the eastern part of the Florida peninsula towards the centre of Cuba and then would have moved to the west to return to Key West. That was the planned route, the route for which they were given authorization to take off from Opa Locka on 24 February.

The other line is the actual route, the one that they actually took. It has nothing to do with the authorized route. Instead of descending by the east coast of Florida, they crossed the Florida peninsula to Key West and from there moved south, then west — all of this within the region under United States air traffic control — and then follow a straight line to the capital of Cuba. I repeat: the two lines are from the United States; they are their information — the request they made and what they actually did. Consider for a moment some timings. At 1.15 p.m. they took off from Opa Locka; at 2.55 p.m. they were almost at the 24th parallel. There was still some distance to go. They have been on route for one hour and 45 minutes, three quarters of the time of the whole incident, from the take-off from Opa Locka to the shootdown of the planes and the return of third plane. Three quarters of the time, an hour and 45 minutes. Where? Over Cuban territory, in Cuban airspace, or over United States territory in United States airspace?

What did the United States do to avoid an incident, or the playing out of an incident? There is a violation here, Madam Ambassador: from the moment of take-off the authorized flight plan was ignored.

It was ignored throughout the flight. It was ignored for an hour and 45 minutes. And the experts in interception manuals — those who know the most, those who pontificate, those who advise the rest of the world

as to what mechanisms to use in order to peacefully and smoothly avoid incidents — why did they do nothing? Where are the radio communications from any of those authorities — their own version? Where are they? What did Opa Locka say? What did Miami say? What did Key West say? Where are their warnings to those flights? Where is the signal that they should turn back, that they should land or that they should fly where they had the right to do so? Did it ever occur to you, Madam Ambassador, that flying without authorization over an area they had not been authorized to overfly could have endangered the life of any United States citizen who might be using that same airspace in a lawful way? Did it ever occur to you that for an hour and three quarters, these persons disregarded the United States authorities, who were vigilant, who had been warned and who were documenting this — why? — to allow them to fly directly over the capital of the Republic of Cuba, and then to say later that the very specific information they had ended here, that the last minutes were either erased or disappeared, or that their sophisticated technological methods were not able to specify what happened in the last stages of these flights.

But these authorities were fully aware of the initial stage of the flight and, as everything had been prepared in advance, not only did they do absolutely nothing, but it almost seems as if they were waiting with their arms crossed — and with the radar shut off, of course — for the incident to occur and be announced, so that they could become the great champions, before the Security Council, of international law, of civil aviation, of humanitarian principles, and so on.

The United States concealed information, falsified data and impeded the analysis, and, in addition — using procedures that are truly regrettable — tried to make consideration of this item before the Security Council as difficult as possible.

The Security Council now has before it a draft resolution that, in its first operative paragraph, would endorse the conclusions of the ICAO report and the resolution the ICAO Council adopted. In other words, members would endorse the conclusions that the Council of ICAO refused to endorse; it asks that the Security Council approve the conclusions of a report and at the same time the resolution of the body charged with studying it. That body rejected the suggestion repeatedly made by certain parties that it endorse the report, and it rejected it because of the great number of inconsistencies, contradictions and gaps the report contains.

The Council would be asked, in paragraph 5 of the draft resolution, to reaffirm the principle that

> "each State shall take appropriate measures to prohibit the deliberate use of any civil aircraft" *(S/1996/596, para. 5)*

and so on. The author is the United States. What real significance would it have if the Security Council accepted this formulation by a State that clearly has taken no measures whatsoever to prohibit the deliberate use of civil aircraft in a way inconsistent with the aims of the Chicago Convention? What are the "appropriate measures"? Should the Council also provide military aircraft to persons who will violate the rules of civil aviation? Should it appoint ambassadors to accompany the provocateurs? Should it tolerate, allow, promote, incite these activities? With what moral authority can the United States talk about something that it systematically violates day after day?

Paragraph 7 urges

> "all States that have not yet done so to ratify as soon as possible the Protocol adding article 3 *bis* to the Chicago Convention" *(S/1996/596, para. 7)*.

Will the United States do this? Will it set an example? Has it already taken the steps to ratify the Protocol? Since it is the only author of this draft resolution, one would assume that one who exhorts, one who asks the entire world to do something, would itself be prepared to follow through. At best, this is possible. But the end of the paragraph is truly a bad joke:

> "and to comply with all the provisions of the article pending the entry into force of the Protocol" *(ibid.)*.

Has the United States really been applying the provisions of article 3 *bis*? Has it ever truly applied any part of this article? Is it going to do so now? Is it going to change its policy? Is it going to take genuine measures to prevent the deliberate use of aircraft that are registered as civilian by the United States but that are dedicated to violating the rules of international civil aviation?

I should like to say the following: I know that some delegations that are members of the Council — not all, because a number of States here have not ratified this article — attach great importance to this issue. The Republic of Cuba wishes to offer to all of them the possibility of showing that they genuinely, and not only

rhetorically, adhere to article 3 *bis*. The Republic of Cuba proposes, and is already taking the relevant steps, to ask the Council of the International Civil Aviation Organization to analyse, at its next session, problems related to the abuse of civil aviation in our region and to the improper use of aircraft registered as civil aircraft in the United States, in contravention of the Chicago Convention. We hope that the Council of ICAO will agree to discuss this issue, which would mean an analysis of the necessary conditions for compliance with the provisions of this article in one specific part of the world.

We hope that all the States that defend 3 *bis* and that want to see it enforced will cooperate with us so that this article, and its just purposes, can be truly applied in practice — not used simply so that a State that has not ratified it and does not comply with it can utilize it demagogically, exhorting others to accept it. I repeat that very soon the Council of ICAO will be called upon at the request of Cuba to examine this crucial question of the improper use of civil aviation in this region that unites us and separates us, specifically violations of international civil aviation and its norms. This, I might mention in passing, does not mean only violations of the sovereignty of the Republic of Cuba — which might be of interest to the United States — but also means threats to the safety of citizens of the United States, who are the majority users of the international air corridors over the Republic of Cuba; to United States aircraft, which represent the majority of the aircraft flying over Cuba; and to United States passengers, who represent the majority of those who use the airlines that fly over the territory of the Republic of Cuba.

A month ago, the ICAO Council considered this question and adopted the decision contained in its resolution. I recall very vividly the moment when consideration of this subject began. I heard the representative of your country, Sir — the representative of France to ICAO — draw attention to the fact that, independent of or beyond the specific issue to be considered by ICAO at that time, what was before the ICAO Council was above all the question of the prestige and credibility of ICAO. This subject, which was first raised in the discussion by the representative of France, was reiterated on many occasions by most members of the ICAO Council. I regret that the verbatim records of all that was said there are not available to members, and that no steps have been taken to make them available. Of course, my delegation is quite prepared to provide to anyone who might be interested in the whole truth of events in Montreal with this information, which of course we have in our possession.

In the end, on 27 June, I believe that the ICAO Council, as I said there, managed to preserve its prestige. It managed to prevent its credibility being damaged by the manipulative attempts it had to confront. It is up to this Council now to act. It is up to its members to respond on behalf of the credibility and prestige of this organ.

The President (*interpretation from French*): I thank the President of the National Assembly of People's Power of the Republic of Cuba for the kind words he addressed to me.

The next speaker is the representative of Colombia. I invite him to take a seat at the Council table and to make his statement.

Mr. García (Colombia) (*interpretation from Spanish*): I should like first of all to express our pleasure at seeing you, Sir, presiding over this meeting of the Council. We commend you on your conduct of the presidency for July.

My delegation wishes to participate in this debate to help avoid any recurrence of incidents like the one that was the subject of the resolution adopted by the Council of the International Civil Aviation Organization (ICAO), and of the events that surrounded it.

We believe that these incidents and events require the international community to reflect on the causes that led to them or, more to the point, on those that might precipitate further incidents, if we are to avoid merely recriminatory attitudes that are not in keeping with the responsibility of all States to avoid such incidents.

My delegation wishes to express its appreciation to the Council of the International Civil Aviation Organization for its efforts to agree on a moderate — or better, measured — resolution with the constructive objective of impressing upon all States the need to respect international principles of civil aviation.

In this connection, because of their relevance, we wish to stress operative paragraphs 2 and 3 of the ICAO Council resolution of 27 June 1996, which make the point that these are concomitant principles that are ineluctably linked. The principle that States must refrain from the use of weapons against civil aircraft in flight is

as relevant as that which establishes that each State shall take appropriate measures to prohibit the deliberate use of any civil aircraft registered in that State for any purpose inconsistent with the aims of the Convention on International Civil Aviation. None the less, concerned as the international community is to avoid further tragic incidents, from a preventive and practical standpoint it is of the utmost urgency that the second of these principles be respected so that the sovereignty of States is not affected by acts that contravene the Convention and the principles of the United Nations Charter.

My delegation feels that the Security Council could take advantage of its consideration of the item before us to reiterate emphatically the commitment of the United Nations to the inviolability of the sovereignty of States and the individual's right to life.

As to the draft resolution under consideration, we regret that it does not contain some of the amendments proposed by the caucus of members of the Non-Aligned Movement that are members of the Security Council. Similarly, we find no justification for the Security Council's remaining indefinitely seized of the matter before it. If that is the decision, we believe that it should be made taking into consideration the many elements that led to the incidents without discriminatory neglect of events that may have preceded or followed them.

Lastly, my delegation wishes to reiterate the need for all States to respect and comply with the principles and norms of the Chicago Convention.

The President (*interpretation from French*): I thank the representative of Colombia for the kind words he addressed to me.

The next speaker is the representative of the Lao People's Democratic Republic. I invite him to take a seat at the Council table and to make his statement.

Mr. Kittikhoun (Lao People's Democratic Republic) (*interpretation from French*): Like other speakers, I wish at the outset to congratulate you, Sir, on your assumption of the presidency of the Security Council for the month of July. Aware as I am of your skills and broad experience in international affairs, I believe that the Council's work will be fruitful. I also wish to congratulate the Permanent Representative of Egypt for his outstanding work in guiding the Council's business last month. The Lao delegation also wishes to thank most sincerely all the members of the Council for granting our request to participate in this important discussion of the question before the Council.

In the note from its Ministry of Foreign Affairs of 26 February 1996, the Government of Cuba informed the world that on 24 February 1996, between 3.21 p.m. and 3.28 p.m., two Cessna aircraft which had taken off in Florida had been shot down by aircraft of the Cuban Air Force when they were again violating the airspace above Cuban territorial waters at a distance of 8 to 12 kilometres to the north of the beach of Baracoa, west of Havana. In the same note the Government of Cuba also stated that earlier, between 10.15 a.m. and 11.27 a.m., three aircraft of the same type had violated Cuban airspace and territorial waters. A Cuban Air Force plane then flew towards them, forcing them by its presence to leave the area. The planes in question then flew north. Again according to Cuba, at 1.21 p.m. one of the planes again headed towards Cuba, despite the fact that it had been warned by Havana air traffic control that it was exposing itself to great risk should it decide to intrude into this zone. In addition to the violations of airspace and territorial waters, Cuba referred to the introduction, by groups of people of Cuban origin based in Florida, of weapons and explosives into its territory, and to the dispatch of commandos to spread violence in various regions of the country. In short, these violations were committed on numerous occasions, even though those responsible had been repeatedly warned that Cuban patience had its limits and that those incursions would no longer be tolerated.

According to Cuban authorities, all means of persuasion to prevent acts of this kind had thus been exhausted. That is why the Government of Cuba decided to put an end to the flights, which jeopardized Cuban sovereignty and endangered the lives of Cuban citizens.

My country, the Lao People's Democratic Republic, has followed this unfortunate incident very closely. We listened very attentively to the explanations offered by the Cuban Government to the international community. We profoundly regret the loss of life that resulted from this incident, and it is our sincere wish that this should never recur.

The world knows that the question now before the Council is not an easy one. On the contrary, it is delicate and particularly complex. Nevertheless, we are of the firm opinion that in all circumstances every country or sovereign State has the right and the sacred duty to defend its independence and territorial integrity if it

considers that these are threatened or violated. This is the simplest and most elementary exercise of international law. However, given that at this stage a multitude — I stress, a multitude — of technical questions have not yet been clarified, we do not believe that there are yet grounds to resolve the substance of the question: knowing who is responsible for this incident, how it took place, and why.

In the view of our delegation, this unfortunate incident is but a sad reflection of the difficult relations that have existed for more than three decades between the Republic of Cuba and the United States of America. It seems that the two countries have not yet exhausted all available means to try to resolve their problems. Lack of mutual trust generally predominates in their relations. The international community can only be alarmed by this situation which benefits neither party, but, on the contrary, jeopardizes the legitimate interests of both peoples.

It is true that, as we said earlier, the question before us is extremely complicated, but we also know that it is not insoluble. Provided that there is true political will on the part of the parties to the conflict, the desired end can surely be attained. Against this background, the Lao People's Democratic Republic, faithful to its policy of peace, independence, friendship and cooperation with all countries of the world, appeals to both parties — the Republic of Cuba and the United States of America — to demonstrate great wisdom and endeavour to improve their bilateral relations and resolve their disputes peacefully, which would contribute to the maintenance of peace and the promotion of cooperation in this region and in the rest of the world.

That is the opinion which my delegation wishes to present to the Council on the subject of this unfortunate incident.

The President (*interpretation from French*): I thank the representative of the Lao People's Democratic Republic for the kind words he addressed to me.

The next speaker is the representative of Viet Nam. I invite him to take a seat at the Council table and to make his statement.

Mr. Ngo Quang Xuan (Viet Nam) (*interpretation from French*): First, I should like to congratulate you, Sir, and to thank you for having convened this meeting, which our delegation considers very important.

(*spoke in English*)

With regard to the item under discussion, my delegation would like to reaffirm that we, as a Member of the United Nations, have always laid emphasis on the most fundamental principles of our Organization, that is to respect the national independence, sovereignty and territorial integrity of all countries, be they large or small, and to abide by the principles of non-intervention and non-interference in their internal affairs.

As a non-aligned country and a good friend of Cuba, Viet Nam supports the foreign policy carried out by the Cuban Government, which is in accordance with the principles of respect for peace, friendship, national independence, sovereignty, territorial integrity, non-intervention and non-interference in the internal affairs of other countries. In this matter, my delegation fully supports the ongoing efforts made by the international community, including those of the non-aligned countries, with a view to maintaining the aforementioned principles.

The President (*interpretation from French*): I thank the representative of Viet Nam for the kind words he addressed to me.

It is my understanding that the Council is ready to proceed to vote on the draft resolution before it. Unless I hear any objection, I shall put the draft resolution to the vote.

There being no objection, it is so decided.

I shall first call on those members of the Council who wish to make statements before the voting.

Sir John Weston (United Kingdom): I must say that, listening this afternoon to the representative of Cuba, I found myself wondering whether I was listening to something out of *Alice in Wonderland*, where everything is topsy-turvy and back-to-front — what you might call either Wonderland or Looking-Glass Land. It is rather revealing, I thought, that early in his statement he should have been quoting Lewis Carroll at us. But to adapt a line of Shakespeare, perhaps the envoy doth protest too much.

The Security Council is about to vote on a draft resolution which makes clear this Council's condemnation of the use of weapons against civil aircraft in flight. That is why my delegation will be voting in favour of the draft resolution. The United Kingdom would like to take

this opportunity to express its deep condolences to the families of those who were killed on 24 February 1996.

In the Council President's statement of 27 February 1996, the Council strongly deplored the shooting down by the Cuban Air Force of two civil aircraft on 24 February and requested the International Civil Aviation Organization (ICAO) to investigate this incident and to report its findings to the Security Council. The United Kingdom strongly supports the draft resolution's endorsement of the ICAO report and resolution. And I think it is fair in the context of this afternoon's discussion to remind ourselves of what some of the conclusions of that report are.

Conclusion 3.12 is that the first aircraft was destroyed by an air-to-air missile fired by a Cuban MiG-29 aircraft. Conclusion 3.13 is that the second aircraft was destroyed by an air-to-air missile fired by a Cuban MiG-29 military aircraft. Conclusion 3.18 is that means other than interception were available to Cuba, but had not been utilized. Conclusion 3.19 is that during the interceptions no attempt was made to guide them away or instruct them to effect a landing at a designated aerodrome. Conclusion 3.20 is that the standard procedures for manoeuvring and signals by the military interceptor aircraft were not followed. Conclusion 3.22 is that the rule of customary international law that States must refrain from resorting to the use of weapons, as codified in article 3 *bis* of the Chicago Convention, apply irrespective of whether or not such aircraft is within the territorial airspace of that State.

There can be no doubt that Cuba has contravened principles of international law in using force against civil aircraft and in not following established international procedures on interception of such aircraft. The message in this draft resolution is clear. Such incidents are unacceptable to the international community.

There is an obligation on all States to comply with the provisions of international law and the standards and recommended practices set down in the Chicago Convention and its annexes, and to cooperate fully with the International Civil Aviation Organization. The United Kingdom looks to all States to abide by their obligations in this regard.

The United Kingdom would draw the Council's attention to paragraph 7 of the resolution before us. We urge all States who have not yet ratified the Protocol adding Article 3 *bis* to the Chicago Convention to take the necessary steps to do so as soon as possible.

The purpose of this draft resolution is firstly to draw attention to the illegal use of weapons in this incident. And I think it really is important to recall this afternoon against the background of what I might call the cloud of unknowing to which we had to listen earlier — a virtuoso demonstration of the art of filibuster in the grand manner. I heard the representative of Cuba say in part of his statement that Cuba had a lot of very long experience of this and that. Well, I think this Council also has very long experience — experience, among other things, of tactics deployed in this Chamber in relation to the policy of the Government of Cuba. I myself remember very clearly first hearing that kind of approach one autumn day in the year 1962 in this very Chamber. It brings to mind something that I might call the tactic of the whopper. I make no accusations. But the tactic of the whopper applies when one wants to take liberties with the truth and rather than indulging in what Churchill would have called a little terminological inexactitude, the tactic of the whopper dictates that if you tell it long enough and you tell it big enough, there is a sporting chance that someone will believe part of it, even if only out of sheer exhaustion. *Plus ça change, plus c'est la même chose.*

But this draft resolution also looks forward and seeks to prevent the recurrence of similar actions which put at risk the lives of those travelling in civil aircraft in the future. My delegation hopes that all States will take due note, acknowledge their obligations and take every possible measure to ensure that the tragic events of 24 February are not repeated.

In taking action this day, the Security Council is doing no more than upholding the principles of international law and fulfilling its responsibilities to safeguard international peace and security. It is with this in mind that I commend the draft resolution to colleagues in this Council, and that is why we shall vote for it ourselves.

Mr. Eitel (Germany): Germany will vote in favour of the draft resolution on the communication which has been presented at the request of this Council by the International Civil Aviation Organization (ICAO) on the incident which occurred on 24 February 1996 and which led to the shooting down of two United States-based unarmed civilian aircraft by the Cuban Air Force.

The vote on this draft resolution comes after weeks of intense discussions and deliberations. All different aspects of the case have been subject to close scrutiny. In this context, we would like to commend ICAO for its

resolution and its report. The main item at stake is the basic rule that States must refrain from the use of weapons against civil aircraft in flight. Let me add, in the light of what has been explained at some length by the representative of Cuba, that shooting down unarmed civilian aircraft — regardless of where this is done: whether it is done over territorial waters or over the high seas — is a clear breach of international law — if not codified and ratified, then of customary international law — which must not be tolerated.

Let me use this occasion to express our sincere condolences to the families of those killed in those planes.

We hope that the legal discussion can now come to an end, and that further violations of this basic rule will not occur. We would like to see that the recent discussion has sharpened the conscience and sensibility of those responsible, and we sincerely hope that this will remain true in the future.

Mr. Qin Huasun (China) (*interpretation from Chinese*): Civil aviation not only involves the safety of the people of all countries but is also closely related to the sovereignty of those countries, to which due attention should be paid. Therefore, the Council has considered the draft resolution before us on many occasions.

The Chinese delegation expresses its regret over the casualties caused by the shooting down of the two civil aircraft. We are of the view that the principles of international law should be implemented in a comprehensive, fair and balanced manner. No country should apply selectivity to their implementation in accordance with its own needs. Therefore, we maintain that the provisions of international law on the non-use of weapons against civil aircraft should be respected; by the same token, those on the inviolability of territorial airspace and those against the abuse of civil aviation must also be observed.

The Council of the International Civil Aviation Organization (ICAO) has considered all aspects of this question and has adopted a resolution on it. We believe that this resolution is a balanced and fair one which represents the collective will of all the members of ICAO. Therefore, the Chinese delegation repeatedly emphasized during the consultations that the Council should base its actions on this resolution and adopt the same fair and balanced approach. We accordingly put forward reasonable amendments to the draft resolution before us.

Regrettably, however, despite some efforts by the sponsor, the key amendments proposed by the parties concerned were not accepted. This has given the current draft resolution a biased tilt. Therefore, the Chinese delegation will abstain in the vote on the draft resolution before us.

Mr. Legwaila (Botswana): Let me begin by extending to our colleagues in the delegation of the United States our condolences with regard to the pilots who lost their lives in February.

We are today addressing a very sensitive and delicate technical subject. We have had to decode and digest information from charts and graphs; some of us are not very good at that. Our task has not been made easy by the nature of the International Civil Aviation Organization (ICAO) report. It makes the matter under review subject to conflicting interpretations, a state of affairs that is compounded by the history of the area in which the incident of 24 February 1996 took place. Our comments this afternoon are therefore a synthesis of the facts as we understand them from the ICAO report and of our interpretation of the Convention on International Civil Aviation and its annexes.

My delegation made its position very clear earlier this year regarding the absolute necessity for States to refrain from the use of weapons against civil aircraft. There is no doubt in our minds that civil aircraft should be rendered whatever assistance they may need at all times whenever they enter the national airspace of any State unannounced or through an ungazetted entry point. In the normal course of their operations such aircraft would definitely lose their way. They should ordinarily be intercepted and guided to a landing strip, where the true facts regarding their presence in the area may be established.

Equally, civil aircraft should never be used for purposes inconsistent with the spirit and intent of the Chicago Convention. Civil aircraft that take to the air from a country of registration, ignore air corridors they have logged with the control towers and deliberately penetrate the airspace of another country for the purpose of fomenting civil disorder or disturbance there should be seriously warned against engaging in such acts of provocation. While States should indeed refrain from the use of weapons against civil aircraft, they should not be unnecessarily provoked into taking actions they would otherwise ordinarily avoid taking.

In short, civil aircraft should not be used for the provocation of States under any circumstances, and States should not shoot down such aircraft on sight, as this puts the lives of those on board, and the aircraft, in danger.

The draft resolution before us is generally acceptable to my delegation to the extent that it reaffirms the principles enshrined in the Convention on International Civil Aviation and its annexes. We would have been happier, however, if the language of paragraphs 2 and 6 had been drafted differently.

The incident of 24 February 1996 was most unfortunate indeed, and we hope there will be no similar tragic event in the future.

Mr. Queta (Guinea-Bissau) (*interpretation from French*): My delegation has considered very carefully the deliberations of the Council of the International Civil Aviation Organization (ICAO), convened to examine the question of the destruction, on 24 February 1996, of two private civil aircraft registered in the United States. The two airplanes shot down belonged to the Brothers to the Rescue organization. We should like to express once again our regret at the four deaths that resulted from this incident.

This act is a violation of article 3 *bis* of the Convention on International Civil Aviation, under which no circumstance and no argument can justify the use of weapons against civil aircraft in flight.

My Government believes that respect for the rules of international law is an indispensable condition for the maintenance of international peace and security. In this context, we feel that the draft resolution before us, particularly in its paragraphs 4 and 5, sends a clear message aimed at avoiding such incidents in the future. My delegation will support the draft resolution.

Mr. Martínez Blanco (Honduras) (*interpretation from Spanish*): Honduras believes that all peace-loving States must align their conduct with the principles and norms of general, treaty and customary international law. That is why we regret the events related to the shooting down of two civil aircraft on 24 February 1996 by the Cuban Air Force, acts that are in clear contravention of those international principles and norms.

In deploring that incident, this Council recalled in its presidential statement of 27 February that States must refrain from the use of weapons against civil aircraft and must not endanger the lives of persons on board and the safety of aircraft and that States are obliged in all circumstances to respect international law and human rights norms, in particular article 3 *bis* of the Convention on International Civil Aviation.

The report of the International Civil Aviation Organization, which investigated the incident at the Security Council's request, not only reaffirms these principles, but also affirms that, although every State exercises territorial sovereignty over its airspace, it has the duty to observe the principle recognized in customary international law regarding the non-use of weapons against civil aircraft in flight and that, in intercepting such aircraft, its conduct must be guided by the rules laid down in the Chicago Convention of 7 December 1944 and its annexes.

At the same time, the report reminds us that no State must permit, in violation of its international obligations, the deliberate use from its territory of civil aircraft registered in that State to violate the territorial sovereignty of another State. Article 4 of the Chicago Convention is clear in stipulating that:

> "Each Contracting State agrees not to use civil aviation for any purpose inconsistent with the aims of this Convention".

My delegation considers that, in the incident of 24 February, there was a twofold lack of compliance with the responsibilities and obligations established by the Convention on International Civil Aviation. We feel that the international community must not permit such conduct to continue. That is why Honduras, while condemning the use of weapons against civil aircraft, wishes to appeal to the parties involved to comply with their international commitments, to take measures to avoid committing in future such acts, which are incompatible with the objectives of the Convention, and to ratify its article 3 *bis*. My delegation therefore agrees with the contents of the draft resolution before the Council and will vote in its favour.

Mr. Wlosowicz (Poland): On 27 February 1996, the Security Council in its presidential statement requested the International Civil Aviation Organization (ICAO) to investigate the tragic incident of the shooting down by the Cuban Air Force of two civil aircraft on 24 February 1996.

We have before us the resolution of the Council of ICAO and the report of the Secretary General of that organization. Our delegation welcomes both with a great deal of appreciation. These documents confirm our strong belief that States must refrain from resorting to the use of weapons against civil aircraft in flight. This principle, although codified in article 3 *bis* of the Chicago Convention, is indeed very well based in customary international law. But do we really need to quote rules of international law to prove that unarmed civil aircraft must not be shot down? After all, the resolution adopted by the ICAO Council on 27 June 1996 expressly recognizes that the use of weapons against civil aircraft in flight is incompatible with elementary considerations of humanity. Today, we are going to condemn such acts in the Security Council's draft resolution, hoping they will never happen again.

The draft resolution before us reaffirms the principle that each State shall take appropriate measures to prohibit the deliberate use of its aircraft for purposes inconsistent with the aims of the Chicago Convention. We value this principle.

Before concluding, let me take this opportunity to express my delegation's deepest sympathy to the families of the victims of the tragic incident of 24 February 1996. We sincerely hope that today's debate and the draft resolution, in favour of which Poland is going to vote, will prevent such incidents in the future.

Mr. Choi (Republic of Korea): My Government has maintained a firm and consistent position in emphasizing the safety of civil aviation. We are convinced that the use of weapons against unarmed civil aircraft in flight is unacceptable under any circumstances. Such an act constitutes a violation of the rules of customary international law governing international civil aviation, as now codified in article 3 *bis* of the Chicago Convention. In keeping with this view, my delegation joined the Council's consensus last February in adopting the presidential statement, which strongly deplored the shooting down of the two civilian aircraft. At the same time, my delegation considers it very important for the Security Council to reaffirm the principle that all States shall take appropriate measures to prohibit the misuse of civil aircraft.

The draft resolution before us upholds in clear terms the principles of international law concerning the safety of civil aviation, to which my Government is fully committed. The draft resolution rightly condemns the use of weapons against civil aircraft and reaffirms the obligation of all States to take measures to prevent the misuse of any civil aircraft. My delegation, therefore, will vote in favour of the draft resolution.

In conclusion, my delegation would like to express our sincere condolences to the families of the victims of the incident. Indeed, what is most important at this juncture is to prevent the recurrence of similar incidents in the future and to secure the safety of civil aviation. To that end, the principles reaffirmed in the draft resolution must be fully complied with by all States. It is in this spirit that my delegation fully endorses paragraph 7 of the draft resolution, which urges all States which have not yet done so to ratify as soon as possible the Protocol adding article 3 *bis* to the Chicago Convention, and to comply with all the provisions of the article pending its entry into force.

Mr. Wibisono (Indonesia): At the outset, the Indonesian delegation would like to express its appreciation for the note by the Secretary-General (S/1996/509) transmitting the report of the International Civil Aviation Organization (ICAO), entitled "Report of the investigation regarding the shooting down of two U.S.-registered private civil aircraft by Cuban military aircraft on 24 February 1996". The report was produced following the Security Council's request, in paragraph 3 of the presidential statement of 27 February 1996, to investigate the incident in its entirety. That statement also called on the Governments concerned to cooperate fully with the investigation. My delegation would also like to commend the Council of the ICAO, as the specialized intergovernmental body of the United Nations system responsible for civil aviation, for its resolution.

During the previous discussion on the presidential statement requesting the report, Indonesia expressed its position of deep concern, and strongly deplored the shooting down by the Cuban Air Force of the two aircraft because it was incompatible with article 3 *bis* of the Chicago Convention. However, the tenets of article 3 *bis* of the Chicago Convention should be viewed in a comprehensive manner, as they also encompass other cardinal principles. Hence, we would like to recall that article 3 *bis* (d) of the Chicago Convention states that, *inter alia*,

> "each contracting State shall take appropriate measures to prohibit the deliberate use of any civil aircraft registered in that State ... for any purpose inconsistent with the aims of this Convention."

This principle should be strictly adhered to, for it is our opinion that the misuse or misrepresentation of civilian aircraft for other purposes prejudices the safety of legitimate civilian aircraft. Accordingly, it is important to ascertain the true purpose of the flights of 24 February 1996. It is essential that the sanctity of civilian aircraft be preserved. In this regard, we are pleased to learn from the United States Secretary of Transportation, Mr. Federico Peña, that the United States will take appropriate steps to discourage exile pilots from entering Cuban airspace without prior authorization.

Our delegation believes that it is the responsibility of all States to avoid any actions that hinder the development of legitimate civil aviation and the promotion of air safety worldwide. In this regard, my delegation believes that the safety of international aviation should be approached in a constructive manner by the Security Council: rather than condemning the action of one State, the Council should underline the principles providing safe civil aviation conditions, while respecting and promoting the sovereignty of States over their territory, including their airspace. It is my delegation's firm belief that the territorial integrity of a State's airspace must be respected by other States, and that repeated violations of the territorial airspace of Cuba by civilian aircraft would indeed be a cause of concern for Cuba.

It should be noted that more than 340 civil aircraft overfly Cuban airspace daily without incident, and that more than half of these are United States aircraft. Therefore my delegation has reservations with regard to paragraph 6 of the draft resolution because it lacks the most elementary objectivity by urging Cuba to abide by principles it has always held. It is, indeed, intolerable that civil-registered aircraft are used for purposes inconsistent with the Convention on International Civil Aviation and go so far as to violate the sovereignty of States and their airspace. We therefore call upon all States, without exception, strictly to abide by the principles, norms, rules and regulations regarding international air navigation as laid down in the Chicago Convention and its annexes, and in other international instruments.

It is the view of the Indonesian delegation that the Council's reaction should be expressed in a comprehensive and balanced manner. Hence, the Security Council must be assertive in ensuring that all parties are in compliance with the Chicago Convention and its annexes in their entirety. It is our firm belief that international law should be equally applicable to all sovereign nations and not serve the interpretations of one party. If the Council were to endorse such a selective approach, this would only undermine the credibility of international law. In the words of the world Court, as reflected in the works of Professor Georg Schwarzenberger, the rules of international law exist

> "in order to regulate the relations between these coexisting independent communities or with a view to the achievement of common aims."

The incident of 24 February was thoroughly deliberated in the Council of ICAO from 26 to 27 June 1996. Even after three months of investigation, the ICAO team was unable to obtain conclusive evidence which would enable it to determine the precise location of the incident. Significant differences exist in the data provided by the parties involved. Certain aspects require further clarification. Having considered the above circumstances, the Council of ICAO therefore found it difficult to endorse the report of the investigation team. In this regard, we must express our reservations over paragraph 1 of the draft resolution, since the Council of ICAO itself did not endorse the report. Therefore, we deem it inappropriate for the Security Council to endorse the report at this juncture. Similarly, with regard to paragraph 2, the resolution of the Council of ICAO does not qualify the incident of 24 February 1996.

Moreover, our delegation is of the view that the draft resolution could be improved in order to have a balanced text. Among other elements which create difficulties for my delegation is the request to only one party to comply with the relevant resolutions and international civil aviation law, contained in the second part of paragraph 6. We feel that no one party should be singled out. Efforts have been made by various delegations, including the Non-Aligned Movement caucus, to improve the draft resolution. However, my delegation cannot but express its disappointment that a number of proposed amendments aimed at achieving a fair and balanced text were not adequately considered.

It is our firm belief that the responsibility of the Security Council and ICAO is to prevent the recurrence of such incidents in the future. In this regard, it is imperative that all States honour their obligations under the Chicago Convention and its annexes in their entirety. In this context, operative paragraph 9 of the resolution adopted by the Council of ICAO on 27 June 1996 is of paramount importance because it

> "requests all Contracting States to report at any time to the Council any infraction of the above-mentioned

rules contained in the Convention on International Civil Aviation".

We believe that ICAO, as the competent body, will in turn immediately adopt appropriate measures that should prevent further violations of the adopted principles, rules, standards and recommended practices. The ICAO must do so to achieve the orderly and safe development of international aviation, thus preventing the occurrence of further incidents.

We regret the excessive use of force, which resulted in the loss of human life. In this regard, my delegation extends its sympathy to the families of the victims for their loss. It is our sincere hope that such an incident will not recur in the future. Therefore, my delegation would like to reiterate its position that there is no justification for any State to resort to the use of weapons against civil aircraft in flight; no State must endanger the lives of persons on board and the safety of the aircraft. Furthermore, all available measures to prevent such an incident from occurring, as well as standard procedures that guide aircraft away from danger, must be followed.

As a matter of principle, the Indonesian position condemns the use of weapons against civil aircraft, as such use is clearly in violation of the rules of customary international law, as codified in article 3 *bis* of the Chicago Convention and ICAO provisions concerning interception of civil aircraft. These rules must be respected by all parties, regardless of whether or not such an aircraft is within the territorial airspace of that State. The principle of non-recourse to weapons against civil aircraft is indeed reflected in paragraph 6 of the present draft resolution.

Based on these considerations, the Indonesian delegation will vote in favour of the draft resolution before us today.

Mr. Somavía (Chile)(*interpretation from Spanish*): Following an active process of consultations, this draft resolution has been put before us; we shall vote in favour of it.

Ever since the regrettable incident of 24 February was brought before the Council, we have based our actions on the following basic tenets: first, we have endeavoured to express our sensitivity to the humanitarian dimension of the incident, as valuable lives were lost; secondly, we have worked for the preservation of the principles and norms of international law; and thirdly, in the sphere of procedure, we have wanted a clear investigative process that would provide us with accurate background information as to what in fact occurred.

In regard to the first point, our position was clear from the first day. As representative of a country which attaches special importance to humanitarian aspects, we could not but deeply regret the loss of four lives through the downing of two aircraft registered in the United States on 24 February last. For us it is impossible to justify these deaths, and we can only the hope that they may help avoid recurrence of such events.

In connection with the second point, we have also affirmed from the outset as fundamental the need to comply with the norms of international law which govern civil aviation, and in this respect we have supported the principles and norms of the Chicago Convention of 1944, clearly establishing the validity as a norm of customary law, of article 3 *bis* of that Convention. In that context, one of our objectives has been to reaffirm the absolute need for that norm to be respected by all States in order to ensure the proper use and security of civil aviation.

With respect to the third point, we agreed that the Council, together with deploring the events, should go beyond that and ask the International Civil Aviation Organization (ICAO) to conduct an investigation of the case and transmit its conclusions to the Council.

We have carefully studied this issue in the technical report, its recommendations and conclusions, and in the ICAO resolution of 27 June, which transmits it. We have expressed our appreciation for the efforts made by ICAO's technical team, yet we recognize the difficulties faced by the team in arriving at a conclusive document because of the limitations inherent in the nature of the investigation.

All that notwithstanding, we appreciate the resolution adopted by the Council of ICAO, as it provides us with important substantive elements and reaffirms principles which we deem to be fundamental.

Nobody is unaware that above and beyond the factual aspects of the incidence itself, the controversy stemming from it straddles two different questions: on the one hand, the downing of unarmed civil aircraft, and on the other hand, the use of civil aviation in a manner inconsistent with the Chicago Convention. When confronted with the task of placing the importance of the two questions in proper perspective, it is obvious to us that human life is the supreme value which we must

protect, just as we must protect the security of civil aviation in this case, by defending and reiterating the applicable norms of international law. Thus, we shall participate with our vote in the adoption of this draft resolution.

But at the same time, it is our hope that this incident will allow us all to reflect, so that in the future everyone may be able to hold avoid similar situations. My delegation hopes that States will take the appropriate additional measures to prevent the improper use of civil aviation, as is reaffirmed in paragraph 5 of the draft resolution.

Also important to us is the decision taken by the Council of ICAO to establish a mechanism for prior information in the case of possible actions contrary to article 3 *bis*, and for reporting to the ICAO. We also hope that the ICAO study on security aspects relative to the recommended standards and practices and other rules on the interception of civil aircraft will help in preventing future tragedies of this kind.

We conclude with a feeling of profound sorrow at an incident we deplore, which Chile would prefer had never occurred, in the firm hope that the Council will not have to deal with such a matter again, and in full solidarity with the families of the victims.

Mr. Ferrarin (Italy): In its presidential statement of the 27 February last, the Security Council strongly deplored the shooting down by the Cuban Air Force of two civil aircraft, which had taken place three days earlier, resulting in the death of four persons.

On the same occasion, the Council requested the International Civil Aviation Organization (ICAO) to investigate the incident and to report its findings to the Council. The ICAO report has confirmed the basic facts: two unarmed civil aircraft in flight were destroyed, while

> "Means other than interception were available to Cuba, such as radio communication, but had not been utilized". *(S/1996/509, annex, appendix B, para. 3.18)*

The position of the Italian Government is fully reflected in the statement issued by the Foreign Ministers of the European Union on 26 February:

> "Irrespective of the circumstances of the incident, there can be no excuse for not respecting international law and human rights norms". *(S/1996/145, annex)*

The Italian Government deeply regrets the loss of lives caused by this tragic event.

My delegation fully subscribes, therefore, to the reaffirmation of the principle that States must refrain from the use of weapons against civil aircraft in flight, which is also contained in the resolution adopted by the ICAO and forwarded to the Security Council with the report. Such use is indeed a violation of the rules of customary international law, irrespective of whether or not the aircraft is within the territorial airspace of that State and irrespective, as well, of whether or not that State has ratified the Protocol introducing article 3 *bis* of the Convention on International Civil Aviation.

On the other hand, we also believe that the ICAO Council was correct in underlining the principle that each contracting State shall take appropriate measures to prohibit the deliberate use of any civil aircraft for any purpose inconsistent with the aims of the Convention. The draft resolution before the Council contains an important reference to this principle.

Indeed, the text of the draft resolution, largely based on the resolution adopted by the ICAO Council, contains specific references to all principles governing international civil aviation relevant to the issue under consideration, while noting in its crucial paragraph that the unlawful shooting down by the Cuban Air Force of the civil aircraft violated the most basic of these principles.

For these reasons, Italy will vote in favour of the draft resolution before the Council.

Mr. Elaraby (Egypt) (*interpretation from Arabic*): The delegation of Egypt wishes to make the following comments before the vote on this draft resolution.

First of all, the subject before us today is, in the opinion of my delegation, a legal one. Even if it has important political dimensions, it relates to the need to safeguard respect for international law under the Chicago Convention of 1944 and its additional Protocols, in particular the 1984 Protocol adding the text of article 3 *bis*. This article enshrines the rule of customary law, whereby countries undertake to refrain from the use of weapons against civil aircraft in flight. The text of this article — and I personally participated in drafting it — is global in scope and does not allow for any exception, whatever the grounds may be. Article 3 *bis* affirms the right of every country to protect its sovereignty by

obliging any aircraft overflying its territory without due cause to land at an airport according to procedures adopted by the International Civil Aviation Organization (ICAO). However, this must be done without endangering the lives of passengers on board the aircraft.

We live today in a world that must be governed by law, and any violation of international law is a violation of the rights of every country. We in the Security Council must act in solidarity so as to address any violations clearly and specifically. Secondly, the Security Council's approval of the conclusions of the report — even through we note contradictions in certain parts of the report, and even though the Security Council approves the report adopted by the Council of ICAO by consensus — is aimed mainly at ensuring the respect of, and full support for, international law in this area. It aims also at ensuring the observance of internationally adopted procedures and measures regarding the interception of any aircraft penetrating the airspace of a country, whether that country has ratified the Convention or not.

Egypt has ratified article 3 *bis* and would invite countries that have not yet ratified that text to do so as quickly as possible. We believe that all countries should respect the rules set out in that Protocol. The delegation of Egypt considers it extremely important to affirm, as mentioned in the draft resolution and without any exceptions, the need for all Member States to take appropriate measures to prohibit the use of any civil aircraft registered in that State or operated in full knowledge of the facts by an operator who has his principal place of business or permanent residence in that State for any purpose inconsistent with the aims of the Chicago Convention and related Protocols, particularly if the goals are political.

For this reason, the delegation of Egypt will vote in favour of the draft resolution.

Mr. Gorelik (Russian Federation) (*interpretation from Russian*): Today the Security Council is considering a very important question, which has a number of closely interrelated aspects. Many of these have recently become the focus of particular attention by the international community.

We are facing a problem: how to ensure in practice the proper observance and integration of the principles of humanity, national security, State sovereignty in the flying of civil aircraft. To strike an optimum balance between these principles is an extremely complex task, but it cannot be deferred.

As a result of long and painstaking efforts, the international community has established an international legal framework for an approach to this set of issues. As we know, these efforts were enshrined in article 3 *bis* of the Convention on International Civil Aviation. Unfortunately, not all States have yet ratified that article.

Turning to specifics, the Security Council is endeavouring to come to grips with all the circumstances of the tragic incidents of 24 February of this year, which resulted in loss of life. We would like to reiterate that we profoundly regret this loss of life and to express our condolences to the bereaved families.

The main lesson here is that all States without exception should fully comply with the requirements of article 3 *bis* in their entirety. This is precisely how we view the essence of the consideration of the tragedy of 24 February, both in the Security Council and in the International Civil Aviation Organization (ICAO). As for the results of the work of ICAO, we are in a position to say that this most authoritative body in the field of civil aviation opted for a constructive approach on the basis of an expert analysis of this incident, to focus its attention mainly on the prevention of similar incidents in the future.

The draft resolution before the Security Council reaffirms the conclusion of the Council of ICAO, that States must refrain from the use of weapons against civil aircraft in flight and that, when civil aircraft are intercepted, the lives of persons on board must not be endangered. This is a very important reaffirmation.

The draft resolution condemns the use of weapons against civil aircraft in flight as incompatible with considerations of humanity, the rules of customary international law, standards and recommended practices. It is our conviction that this applies to all States.

In this, however, the Security Council bears a great responsibility in terms of effective and timely measures to ensure compliance with international law, which includes not allowing violations of the sovereignty of Member States or of the standards and rules of international civil aviation.

Unfortunately, the draft resolution before us, despite real improvements over the initial text — and we note

with satisfaction the efforts of the United States delegation to that end — continues to deviate from the general direction consistent with the interests of all members of the international community. This text remains unbalanced from the political and international legal standpoints. It clearly does not strike a balance between two fundamental principles: the non-use of weapons against civil aircraft and the non-use of such aircraft for illegal purposes. In our view, this establishes an unfortunate precedent for the future. International law must be complied with by all and in all its aspects. In insisting on unswerving compliance with one of its principles, laid down in article 3 *bis* of the Chicago Convention, it is important to ensure complete compliance with the other, no less significant principle of the same article.

It has come about that the draft resolution skirts over the underlying reasons for the incident and places its main emphasis to the consequences. And yet it is common knowledge that the nature of the flights undertaken by Brothers to the Rescue, as well as the aims pursued through them, are hardly compatible with the aims laid down for the use of civil aviation by the Chicago Convention. The task, however, is for the Security Council, through its authoritative decision, to encourage the adoption of timely and all-encompassing measures to prevent such tragedies from occurring in the future.

As to certain professional questions in connection with the investigation of the incident, the Security Council has actually bypassed the opinions of the ICAO Council. We are also unhappy that the draft resolution emphasizes the report of the Secretary General of ICAO over the resolution of the ICAO Council. We feel that the report is essentially a technical ICAO document, which was, however, not given an unequivocal assessment when it was considered. The resolution of the ICAO Council expresses the political position of the States members of that organization.

In our view, today's draft resolution also falls short of the resolution of the ICAO Council in terms of the balance of its formulations. We do not feel that the Security Council should take it upon itself to make a legal qualification of the tragic events of 24 February, not taking duly into account the views of the specialized agency competent in these matters.

In other words, we regret that accuracy and thoroughness were sacrificed in the draft resolution to a desire to force a decision. Unfortunately, the repeated appeals of the Russian and other delegations to continue constructive work towards an agreed text that would fully reflect all aspects of this multifaceted problem went unheeded.

We are convinced that there was a real opportunity to arrive at a generally acceptable text — and hence a correct interpretation for future incidents of this kind — and our delegation tried up to the very last minute to work towards that end. It is not our fault if this did not succeed.

In view of these considerations, the Russian delegation cannot support the draft resolution in its present form and will abstain in the voting.

The President (*interpretation from French*): I now put to the vote the draft resolution contained in document S/1996/596.

A vote was taken by show of hands.

In favour:

Botswana, Chile, Egypt, France, Germany, Guinea-Bissau, Honduras, Indonesia, Italy, Poland, Republic of Korea, United Kingdom of Great Britain and Northern Ireland, United States of America

Against:

None

Abstaining:

China, Russian Federation

The President (*interpretation from French*): The result of the voting is as follows: 13 votes in favour, none against and 2 abstaining. The draft resolution has been adopted as resolution 1067 (1996).

I shall now make a statement in my capacity as the representative of France.

The events of 24 February — the shooting down of two civil aircraft by the Cuban Air Force, leading to the deaths of four persons — prompted a strong emotional reaction expressed in the Security Council's presidential statement of 27 February.

Beyond the emotions, two imperatives arose: to establish the facts and to recall the rules, respect for which should guarantee that a tragedy of this kind will not reoccur.

The International Civil Aviation Organization (ICAO) has already helped to meet these goals. The report of the investigation undertaken by the Secretary General of that organization describes the chain of events that led to the incidents of 24 February. Two points have emerged with particular clarity. The first is that these events occurred in a context of tension caused by repeated violations of Cuban airspace in previous months. The second is that weapons were deliberately used against unarmed civil aircraft without prior recourse to procedures that would have made it possible to divert these planes and avoid the fatal outcome.

The resolution adopted by the ICAO Council recalls rules applicable to this case. These are those codified in the Protocol adding article 3 *bis* to the Convention on International Civil Aviation. This article lays down the basic principle of the non-use of weapons against civil aircraft in flight. It also formulates several principles aimed at protecting States against the effects of the use of civil aircraft for purposes inconsistent with the aims of the Convention. The ICAO Council was right to recall these rules and to appeal for the ratification of the Protocol adding article 3 *bis*.

The resolution adopted today by the Council, which my delegation supported, is completely consistent with the results of ICAO's work. It notes a fact that no one disputes: the shooting down of two civil aircraft on 24 February violated the principle of the non-use of weapons against civil aircraft in flight. It also clearly recalls the principle that every State has complete and exclusive sovereignty over the airspace above its territory and the principle that each Contracting State shall take appropriate measures to prohibit the use of any civil aircraft registered in that State for any purpose inconsistent with the aims of the Chicago Convention. The French delegation, moreover, attaches great importance to the resolution's appeal to all States which have not yet done so to ratify the Protocol adding article 3 *bis* and to implement it pending its entry into force.

The resolution adopted by the Security Council thus makes an essential contribution to the strengthening and consolidation of international law, which we hope will prevent any repetition of events such as those we witnessed last February.

I now resume my functions as President of the Council.

Mrs. Albright (United States of America): I would like to thank the members of the Security Council for this overwhelming support and also for the condolences expressed for the deaths of the pilots. But I feel committed to making a brief statement of reply.

The representative of Cuba has offered us many words this afternoon. But, despite the many words we heard, we have heard nothing new. We have heard nothing to change the fact that the International Civil Aviation Organization (ICAO) has concluded that Cuba shot down two planes over international waters. We have heard nothing to change the fact that the ICAO has concluded that these were civilian planes. If the representative of Cuba continues to doubt this fact, perhaps he should talk to the pilots of the Cuban MIGs who identified these planes as civilian aircraft before they blew them out of the sky. We heard nothing to change the fact that the ICAO has concluded that Cuba violated all norms of civil aviation by shooting first and asking questions later. And we have heard nothing to change the fact that the Security Council has now endorsed the conclusions of the ICAO report and thereby rejected Cuba's case completely.

But more important than all of that, I sat here and listened to the representative of Cuba for more than one and a half hours and, despite all the words I heard, I heard nothing to indicate regret by the Cuban Government for the four civilian men who were killed. I heard no offer of condolences to the families, and I heard no willingness by the Cuban Government to take responsibility for an act that this Council has condemned as a violation of international law.

Finally, I listened carefully to the representative of Cuba use the phrase, "Sentence first — verdict afterwards". I still do not understand the point he was making, since this Council asked the ICAO to investigate precisely and to render its final judgment after an objective examination of the events of 24 February 1996. But sadly, I must admit, "Sentence first — verdict afterwards" is precisely what happened. For it is certainly true that on 24 February, five months ago, without any inquiry, without any warning, and without regard to law and decency, the Cuban Government sentenced four of my countrymen to death over international waters. Five months have gone by and the verdict is in: this Council has declared Cuba guilty as charged — guilty of violating international law. It is high time for Cuba to accept the judgment.

The President (*interpretation from French*): The representative of Cuba has asked to speak, and I call on him now.

Mr. Alarcón de Quesada (Cuba) (*interpretation from Spanish*): I do not want to take up much of the Council's time, and it is not necessary. We did not need a Council meeting to do what the representative of the United States believes the Council has done. On 20 June, even before the report of the investigative team was issued, we heard exactly the same words from the White House. Until yesterday the Council had an opportunity to take a decision consistent with what it said in February. As one representative very recently recalled, nine members of the Council put forward ideas that would have been completely along the lines of the conclusions of the Council of the International Civil Aviation Organization (ICAO).

One delegation, long before the meeting of the Council and the meetings of ICAO, insisted on repeating its lies and distorting the truth without replying to specific questions: where are the witnesses? Where is the recording? Is it the one that was distributed in February, or the mutilated one given to the ICAO in May? Where is the truth, my dear friend? Why have you, the defenders of the truth, put so much time and effort into hiding it? And somebody expressed surprise that we recalled the brilliant work of Lewis Carroll.

The specialized agency of the United Nations, ICAO, dedicated four long meetings in two days of work to the consideration of the report, which was conducted by civil aviation specialists. They did not do what members of the Council, in a couple of hours, under pressure and manipulation, have been capable of doing. I think that the majority of members deserve a good rest.

The President (*interpretation from French*): There are no further speakers. The Security Council has thus concluded the present stage of its consideration of the item on its agenda.

The meeting rose at 6.35 p.m.